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HOUSE BILL 328

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Larry A. Larranaga

AN ACT

**RELATING TO HEALTH; ENACTING THE PARENTAL NOTIFICATION ACT;
ESTABLISHING PROCEDURES WHEN CERTAIN FEMALES REQUEST AN
ABORTION; PROVIDING FOR JUDICIAL HEARINGS; PRESCRIBING
PENALTIES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE. -- This act may be cited as the
"Parental Notification Act".**

**Section 2. DEFINITIONS. -- As used in the Parental
Notification Act:**

**A. "abortion" means the use of any means to
terminate the pregnancy of a female known to be pregnant, with
knowledge that the termination will, with reasonable
likelihood, cause the death of the fetus;**

B. "fetus" means an individual human organism from

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1 fertilization until birth; and

2 C. "parent" means one parent of the pregnant female
3 or a guardian or conservator of the pregnant female.

4 Section 3. NOTIFICATION CONCERNING ABORTION. --

5 A. An abortion shall not be performed upon an
6 unemancipated minor or upon a female for whom a guardian or
7 conservator has been appointed because of a finding of
8 incompetency until at least forty-eight hours after written
9 notice of the pending operation has been delivered in the
10 manner specified in Sections 3, 4 and 5 of the Parental
11 Notification Act.

12 B. The notice shall be addressed to the parent at
13 the usual place of abode of the parent and delivered personally
14 to the parent by the physician or an agent.

15 C. In lieu of the delivery required pursuant to
16 Subsection B of this section, notice shall be made by certified
17 mail addressed to the parent at the usual place of abode of the
18 parent with return receipt requested and restricted delivery to
19 the addressee, which means a postal employee can only deliver
20 the mail to the authorized addressee. Time of delivery shall
21 be deemed to occur at 12:00 noon on the next day on which
22 regular mail delivery takes place, subsequent to mailing.

23 Section 4. LIMITATIONS. --

24 A. A notice shall not be required pursuant to the
25 provisions of the Parental Notification Act if:

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1 (1) the attending physician certifies in the
2 pregnant female's medical record that the abortion is necessary
3 to prevent the pregnant female's death and there is
4 insufficient time to provide the required notice;

5 (2) the person who is entitled to notice
6 certifies in writing that he has been notified; or

7 (3) if a pregnant female elects not to allow
8 the notification of her parent, guardian or conservator, a
9 judge of a court of competent jurisdiction shall, upon petition
10 or motion, and after an appropriate hearing, authorize a
11 physician to perform the abortion if the judge determines that
12 the pregnant female is mature and capable of giving informed
13 consent to the proposed abortion. If the judge determines that
14 the pregnant female is not mature, or if the pregnant female
15 does not claim to be mature, the judge shall determine whether
16 the performance of an abortion upon her without notification of
17 her parent, guardian or conservator would be in her best
18 interest and shall authorize a physician to perform the
19 abortion without such notification if the judge concludes that
20 the pregnant female's best interests would be served thereby.

21 B. A pregnant female may participate in proceedings
22 in the court on her own behalf, and the court may appoint a
23 guardian ad litem for her. The court shall, however, advise
24 her that she has a right to court-appointed counsel, and shall,
25 upon her request, provide her with counsel.

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1 C. Proceedings in the court pursuant to this
2 section shall be confidential and shall be given precedence
3 over other pending matters so that the court may reach a
4 decision promptly and without delay so as to serve the best
5 interests of the pregnant female. A judge of the court who
6 conducts proceedings pursuant to this section shall make in
7 writing specific factual findings and legal conclusions
8 supporting the decision and shall order a record of the
9 evidence to be maintained, including the judge's own findings
10 and conclusions.

11 D. An expedited confidential appeal shall be
12 available to a pregnant female for whom the court denies an
13 order authorizing an abortion without notification. An order
14 authorizing an abortion without notification shall not be
15 subject to appeal. Filing fees shall not be required of a
16 pregnant female at either the trial or the appellate level.
17 Access to the trial court for the purposes of a petition or
18 motion and access to the appellate courts for purposes of
19 making an appeal from denial of the same shall be afforded to a
20 pregnant female twenty-four hours a day, seven days a week.

21 Section 5. PENALTY. --

22 A. Performance of an abortion in knowing or
23 reckless violation of the Parental Notification Act shall be a
24 misdemeanor and the offender shall be sentenced pursuant to
25 Section 31-19-1 NMSA 1978.

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1 B. Performance of an abortion in knowing or
2 reckless violation of the Parental Notification Act shall be
3 grounds for a civil action by a person wrongfully denied
4 notification.

5 C. A person shall not be held liable pursuant to
6 this section if he establishes by written evidence that he
7 relied upon evidence sufficient to convince a careful and
8 prudent person that the representations of the pregnant female
9 regarding information necessary to comply with this section are
10 bona fide and true, or if the person has attempted with
11 reasonable diligence to deliver notice, but has been unable to
12 do so.

13 Section 6. REPORTING REQUIREMENTS--INJUNCTION--ATTORNEY
14 FEES.--

15 A. No later than October 1, 2003, the department of
16 health shall prepare a reporting form for physicians regarding:

17 (1) the number of parents to whom the
18 physician or an agent of the physician provided the notice
19 described in Section 3 of the Parental Notification Act; of
20 that number, the number provided personally, the number
21 provided by mail, and of each of those numbers, the number of
22 females who, to the best of the reporting physician's
23 information and belief, went on to obtain the abortion;

24 (2) the number of females upon whom the
25 physician performed an abortion without providing to the parent

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1 of the female the notice described in Section 3 of the Parental
2 Notification Act; of that number, the number who were
3 emancipated minors, and the numbers from whom each of the
4 subsections of Section 4 of the Parental Notification Act were
5 applicable;

6 (3) the number of abortions performed upon a
7 female by the physician after receiving judicial authorization
8 to do so without parental notification; and

9 (4) the same information described in
10 Paragraphs (1) through (3) of this subsection with respect to
11 females for whom a guardian or conservator has been appointed
12 because of a finding of incompetency.

13 B. The department of health shall ensure that
14 copies of the reporting forms described in Subsection A of this
15 section, together with a reprint of the Parental Notification
16 Act, are provided:

17 (1) no later than October 1, 2003 to all
18 physicians licensed to practice in this state;

19 (2) to each physician who subsequently becomes
20 newly licensed to practice in this state, at the same time as
21 official notification to that physician that the physician is
22 so licensed; and

23 (3) by December 1 of every year, other than
24 the calendar year in which forms are distributed in accordance
25 with Paragraph (1) of this subsection, to all physicians

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1 licensed to practice in this state.

2 C. By February 28 of each year following a calendar
3 year in any part of which the Parental Notification Act was in
4 effect, each physician who provided, or whose agent provided,
5 the notice described in Section 3 of that act and any physician
6 who knowingly performed an abortion upon a female or upon a
7 female for whom a guardian or conservator had been appointed
8 due to a finding of incompetency during the previous calendar
9 year shall submit to the department of health a copy of the
10 form described in Subsection A of this section, with the
11 requested data entered accurately and completely.

12 D. Reports that are not submitted within a grace
13 period of thirty days following the due date shall be subject
14 to a late fee of five hundred dollars (\$500) for each
15 additional thirty-day period or portion of a thirty-day period
16 they are overdue. A physician required to report in accordance
17 with this section who has not submitted a report, or has
18 submitted only an incomplete report, more than one year
19 following the due date, may, in an action brought by the
20 department of health, be directed by a court of competent
21 jurisdiction to submit a complete report within a period stated
22 by court order or be subject to sanctions for civil contempt.

23 E. By June 30 of each year, the department of
24 health shall issue a public report providing:

25 (1) statistics for the previous calendar year

1 compiled from all of the reports covering that year submitted
2 in accordance with this section for each of the items listed in
3 Subsection A of this section;

4 (2) statistics that shall be provided to the
5 department by the administrative office of the courts setting
6 forth the total number of petitions or motions filed pursuant
7 to Section 4 of the Parental Notification Act and of that
8 number:

9 (a) the number in which the court
10 appointed a guardian ad litem;

11 (b) the number in which the court
12 appointed counsel;

13 (c) the number in which the judge issued
14 an order authorizing an abortion without notification;

15 (d) the number in which the judge denied
16 an order;

17 (e) the number of denials from which an
18 appeal was filed;

19 (f) the number of appeals that resulted
20 in the denials being affirmed; and

21 (g) the number of appeals that resulted
22 in reversals of denials;

23 (3) statistics for all previous calendar years
24 for which such a public statistical report was required to be
25 issued, adjusted to reflect any additional information from

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1 late or corrected reports; and

2 (4) no information that could reasonably lead
3 to the identification of any individual female or of any female
4 for whom a guardian or conservator has been appointed.

5 F. The department of health may by rule alter the
6 dates established in this section or consolidate the forms or
7 reports to achieve administrative convenience or fiscal savings
8 or to reduce the burden of reporting requirements, so long as
9 reporting forms are sent to all licensed physicians in the
10 state at least once every year and the report described in
11 Subsection E of this section is issued at least once every
12 year.

13 G. If the department of health fails to issue the
14 public report required by Subsection E of this section, any
15 group of ten or more citizens of this state may seek an
16 injunction in a court of competent jurisdiction against the
17 secretary of health requiring that a complete report be issued
18 within a period stated by court order. Failure to abide by
19 such an injunction shall subject the secretary of health to
20 sanctions for civil contempt.

21 H. If judgment is rendered in favor of the
22 plaintiff in any action described in this section, the court
23 shall also render judgment for reasonable attorney fees in
24 favor of the plaintiff against the defendant. If judgment is
25 rendered in favor of the defendant and the court finds that the

1 plaintiff's suit was frivolous and brought in bad faith, the
2 court shall also render judgment for reasonable attorney fees
3 in favor of the defendant against the plaintiff.

4 Section 7. SEVERABILITY.--If any part or application of
5 the Parental Notification Act is held invalid, the remainder or
6 its application to other situations or persons shall not be
7 affected.

8 Section 8. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2003.